

REMARKS

I. 35 U.S.C. § 102

Claims 1, 2, 4-8, 10-17, 19, 20, 22-26, 40-42, 44-49 and 51-68 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Gohlke (U.S. Patent No. 5,372,366). Applicant asserts that Gohlke does not anticipate these independent claims because Gohlke fails to expressly or inherently disclose at least one element recited in each of the independent claims.

“Anticipation requires the disclosure in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim.” Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co., 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984) (citing Connell v. Sears, Roebuck & Co., 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983)). Applicant asserts that Gohlke fails to expressly or inherently disclose generating a set of random over numbers and a set of random under numbers.

As described and claimed in the present application, in addition to cards being dealt to players from one or more decks of cards, a mechanical spinning wheel 200 (or random number generator) is used to generate a set of random over numbers 220 and a set of random under numbers 230 prior to each game being played (fig. 2 and page 7, paragraph [0037]). Players then place wagers based on the combined value of their cards against the random sets of numbers (page 2, paragraph [0006]). The generation of random over numbers and under numbers occurs prior to each game. Accordingly, all the independent claims recite claim language directed to “prior to each new game, randomly generating a new set of over numbers and a new set of under numbers” (claims 1, 9 and 19); “means for generating a set of random over numbers and a set of random under numbers prior to each new game wherein each set of random over numbers and each set of random under numbers are selected from a group of numbers” (claims 38 and 45); and “said random number generator adapted to select a set of over numbers and a set of under numbers prior to each new game wherein each set of random over numbers and each set of random under numbers are selected from a group of numbers” (claims 53, 58 and 63).

In contrast, Gohlke discloses a method of playing poker and pocket billiards using a board game (col. 1, lines 8-30). During the play of the game, if a player lands on an over/under space 8, the player must wager on whether the player can cut the cards 27 one

time over or under the number eight card in the deck (emphasis added). Depending on which card the player draws and wagered on, the player wins, loses or pushes (i.e., player wins if player bets over and draws over or bets under and draws under; player loses if player bets over and draws under or bets under and draws over; and player pushes if player draws the number eight card) (col. 5, lines 39-53). So, with Gohlke, the set of over and under numbers are pre-established and fixed for each game. That is, as interpreted by the Examiner, the over numbers are always greater than 8 and the under numbers are always less than 8. With the present game, the over numbers and under numbers are randomly selected prior to each game. Therefore, players are provided with more variety and do not become bored with the game. Accordingly, Gohlke fails to expressly or inherently disclose at least one element recited in each of the independent claims and therefore the Section 102 rejection to these independent claims should be withdrawn.

Since the independent claims are not anticipated by Gohlke, then any claims depending therefrom are not anticipated by Gohlke. Accordingly, the Section 102 rejection to the dependent claims should also be withdrawn.

II. 35 U.S.C. § 103

Claims 3, 9, 17, 18, 21, 27, 28, 43 and 50 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Gohlke in view of Dreaper et al. (U.S. Patent Application No. 2004/0090004). Applicant asserts that these claims are not obvious over Gohlke in view of Dreaper because like Gohlke, Dreaper also fails to teach or suggest all the claim limitations. Specifically, Dreaper also fails to teach or suggest prior to each new game, generating a new set of random over numbers and a new set of random under numbers.

"To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). All words in a claim must be considered in judging the patentability of that claim against the prior art. In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 U.S.C. § 103, then any claim depending therefrom is nonobvious. In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)." MPEP 2143.03.

As discussed above, Gohlke fails to expressly or inherently disclose at least one

element recited in each of the independent claims. See discussion supra. Like Gohlke, Applicant asserts that Dreaper also fails to teach or suggest generating prior to each new game, a new set of random over numbers and a new set of random under numbers. Dreaper discloses generating random numbers using rotatable wheels, numbered balls or other electronic numerical display devices (page 3, paragraph [0026]). However, like Gohlke, Dreaper does not explicitly or implicitly teach using the random number generating devices (whatever they are) to create a new set of random over numbers and a new set of random under numbers prior to each game being played. Since Gohlke and Dreaper fail to teach or suggest each of the limitations of the independent claims, the section 103 rejection of these claims should be withdrawn.

III. Allowable Subject Matter

Although the Office Action indicates that claims 29-39 are allowed, Applicant believes that claims 29-37 are allowed. This belief is based on claim 38 being independent and claims 39-44 being dependent thereon. Accordingly, if claim 39 is allowed, claims 40-44 would be allowable as well. Moreover, the Examiner specifically rejects claims 39-42 under section 102.

IV. Conclusion

It is respectfully submitted that the application is now in condition for allowance and, accordingly, reconsideration and allowance are respectfully requested. Should any questions remain regarding the allowability of the application, the Examiner is invited to contact the undersigned at the telephone number indicated below.

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Respectfully submitted,

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